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Superior Court of California,
County of San Diego

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CHARLES JAMISON, an individual

Plaintiff,

v.

AMIGOFOODS, Corp., a Florida corporation;
REX DISCOUNT, INC., a Florida corporation
and DOES 1 through 10

Defendants.

Case No. 37-2021-00039288-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Plaintiff Charles Jamison (“Plaintiff”) brings this action in the interests of the general public and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy the continuing failure of defendants to warn individuals in California that they are being exposed to the chemical acrylamide by their product, Plantain Chips (“Product”).

2. California’s Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally expose individuals in California to chemicals known to the State to cause cancer, birth defects, or other reproductive harm without providing clear and reasonable warnings to individuals prior to

1 consistent with traditional notions of fair play and substantial justice.

2 8. Venue in this action is proper in the San Diego Superior Court because Defendants
3 have violated or threaten to violate California law in the County of San Diego.

4 **PARTIES**

5 9. Plaintiff Charles Jamison is a resident of San Diego County California and working
6 to protect human health and the environment by curbing the use of harmful products. Plaintiff is a
7 person within the meaning of Health & Safety Code § 25118 and brings this enforcement action in
8 the public interest pursuant to Health & Safety Code § 25249.7(d).

9 10. Defendant AMIGOFOODS, Corp., on information and belief, is a Florida
10 corporation organized under the laws Florida and is a person doing business within the meaning of
11 Health & Safety Code § 25249.11. Defendant REX DISCOUNT, INC, Corp., on information and
12 belief, is a Florida corporation organized under the laws Florida and is a person doing business
13 within the meaning of Health & Safety Code § 25249.11.

14 11. Defendants have manufactured, packaged, distributed, marketed and/or offered the
15 Product for sale or use in California and the County of San Diego. Plaintiff is informed and
16 believes, and thereupon alleges, that Defendants continue to manufacture, package, distribute,
17 market and/or sell the Products in California and in San Diego County.

18 **STATUTORY BACKGROUND**

19 12. The People of the State of California have declared in Proposition 65 their right
20 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
21 reproductive harm.” Section 1(b) of Initiative Measure, Proposition 65.

22 13. To implement this goal, Proposition 65 requires that individuals be provided with a
23 “clear and reasonable warning” before being exposed to substances listed by the State of
24 California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in
25 pertinent part:

26 No person in the course of doing business shall knowingly and intentionally
27 expose any individual to a chemical known to the state to cause cancer or
28 reproductive toxicity without first giving clear and reasonable warning to such
individual...

1 violators. The Notice included, *inter alia*, the following information: the name, address, and
2 telephone number of the noticing individuals; the name of the alleged violator; the statute violated;
3 the approximate time period during which violations occurred; and descriptions of the violations,
4 including the chemical involved, the routes of toxic exposure, and the specific product or type of
5 product causing the violations, and was issued as follows:

- 6 a. The relevant Defendants were provided a copy of the Notice by U.S. Mail.
- 7 b. The relevant Defendant were provided a copy of the document entitled “The
8 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
9 Summary,” which is also known as Appendix A to Title 27 of Cal. Code Regs §
10 25903.
- 11 c. The California Attorney General was provided a copy of the Notice via online
12 submission.
- 13 d. The California Attorney General was provided with a Certificate of Merit by
14 the attorney for the noticing party, stating that there is a reasonable and
15 meritorious case for this action, and attaching factual information sufficient to
16 establish a basis for the certificate, including the identity of the persons
17 consulted with and relied on by the certified, and the facts, studies, or other data
18 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 19 e. The district attorneys, city attorneys or prosecutors of each jurisdiction where
20 the Product is offered for sale within California were provided with a copy of
21 the Notice pursuant to Health & Safety Code § 25249.7(d)(1).

22 21. At least 60-days have elapsed since Plaintiff sent the Notice to Defendants.

23 The appropriate public enforcement agencies have failed to commence and diligently prosecute a
24 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendants based on the
25 allegations herein.

26 22. On information and belief, the Products have been manufactured,
27 distributed, and/or sold by Defendants for consumption in California. On information and belief,
28 the Product continues to be distributed and sold in California without the requisite warning

1 information.

2 23. At all times relevant to this action, Defendants have knowingly and intentionally
3 exposed the users of the Products to acrylamide without first giving a clear and reasonable
4 warning to such individuals.

5 24. As a proximate result of acts of Defendants as persons in the course of doing
6 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the
7 State of California, including the County of San Diego, have been exposed to acrylamide without
8 a clear and reasonable warning. The individuals subject to the illegal exposures include normal
9 and foreseeable users of the Products, as well as all other persons exposed to the Products.

10
11 **FIRST CAUSE OF ACTION**
12 **(Violations of Health and Safety Code § 25249.5, *et seq.*)**

13 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,
14 inclusive, as if specifically set forth herein.

15 26. Defendants are a person doing business within the meaning of Health & Safety
16 Code § 25249.11.

17 27. Acrylamide is listed on the State of California as a chemical known to cause
18 cancer.

19 28. Defendants have and continues to knowingly and intentionally expose individuals
20 who ingest the Products to the chemical acrylamide without first providing a clear and reasonable
21 warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f).

22 29. Continuing commission by Defendants of the acts alleged above will irreparably
23 harm the citizens of the State of California, for which harm they have no plain, speedy, or
24 adequate remedy at law.

25
26 **PRAYER FOR RELIEF**

27 Wherefore, Plaintiff prays for the following relief:

28 1. A preliminary and permanent injunction, pursuant to Health & Safety Code §

1 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in
2 concert or participating with Defendants, from distributing or selling the Products in California
3 without first providing a clear and reasonable warning that consumers of the Products are exposed
4 to acrylamide;

5 2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling
6 Defendants to identify and locate each individual who has purchased the Product and to provide a
7 warning to such persons that consumption of the Product will expose the consumers to a chemical
8 known to cause cancer.

9 3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)
10 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

11 4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to
12 California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the
13 Court; and,

14 5. Such other and further relief as may be just and proper.

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16 DATED: September 15, 2021

LAW OFFICES OF GEORGE RIKOS

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George Rikos
Attorney for Plaintiff